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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM JOHN BOSMA,

Defendant and Appellant.

F072442

(Super. Ct. Nos. VCF317134,
VCF321131)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. James W. Hollman, Judge.

Elaine Forrester, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Smith, J.

William John Bosma entered into plea agreements which resolved two cases that were pending against him for a specified prison sentence. One of the charges to which Bosma pled no contest was a violation of Health and Safety Code section 11379, subdivision (a) (subdivision (a)). This subdivision may be violated in a number of different ways, including the sale of a controlled substance or the transportation of the controlled substance for the purposes of sale.

The complaint as filed charged Bosma with sale of a controlled substance in violation of this section. Based on off the record discussions, the complaint was amended by interlineation just before Bosma entered his plea to indicate he violated subdivision (a) by transporting a controlled substance. Health and Safety Code section 11379, subdivision (c) (subdivision (c)) defines the term “transports” as used in subdivision (a) to mean “transport for [the purposes of] sale.”

Bosma makes a series of arguments, all claiming that since the complaint was not amended to add a reference to subdivision (c), he was unconstitutionally convicted of transporting a controlled substance (methamphetamine) for the purposes of sale.

We reject his arguments. Subdivision (c) merely defines the term “transport[ation].” The prohibited acts are all listed in subdivision (a). Bosma agreed to plead to a violation of subdivision (a), and he was convicted of a violation of subdivision (a). Accordingly, his arguments have no merit.

FACTUAL AND PROCEDURAL SUMMARY

Case No. VCF317134

The complaint was filed on April 30, 2015, and charged Bosma with felony sale of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a)/count 1, and misdemeanor possession of drug paraphernalia in violation of Health and Safety Code section 11364.1, subdivision (a)(1)/count 2. The first count also alleged Bosma had a prior conviction that constituted a strike within the meaning of

Penal Code section 667, subdivisions (b)-(i), and had served six prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

Case No. VCF321131

The complaint in this case was filed on July 17, 2015. The first amended complaint charged Bosma with felony sale of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a)/count 1, felony possession of a controlled substance for the purposes of sale in violation of Health and Safety Code section 11378/count 2, and misdemeanor resisting arrest in violation of Penal Code section 148, subdivision (a)(1)/count 3. The two felony counts alleged Bosma had one prior conviction that constituted a strike within the meaning of section 667, subdivisions (b)-(i), had served five prior prison terms within the meaning of Penal Code section 667.5, subdivision (b), and had suffered a prior conviction within the meaning of Health and Safety Code section 11370.2, subdivision (c).

Plea Agreement

On May 13, 2015, Bosma entered into a plea agreement in case No. VCF317134. Bosma pled guilty to both counts and admitted the strike prior. In exchange, the trial court agreed to sentence him to the low term of two years, doubled to four years. All of the prior prison terms were dismissed.

On July 28, 2015, Bosma entered into a plea agreement in case No. VCF321131. Bosma pled no contest to count two, and admitted the prior strike and the prior felony conviction for violating Health and Safety Code section 11370.2, subdivision (c). As a result of the plea, the trial court agreed to sentence Bosma to one-third the midterm, or 16 months. Counts one and three were dismissed.

On July 28, 2015, Bosma was sentenced in both cases pursuant to the terms of the plea agreements.

DISCUSSION

The issue raised by Bosma is related to his plea in case No. VCF317134. This was the first case to which Bosma entered a plea. After the trial court was advised an agreement had been reached, it advised Bosma of the consequences of his plea, and questioned Bosma to make sure he was entering the plea freely and voluntarily. The trial court confirmed with both Bosma and defense counsel that they had adequate time to discuss the case and the plea agreement. It then informed Bosma of his constitutional rights and confirmed that he was waiving those rights.

As stated above, Bosma entered a plea to counts one and two. Count one alleged in full,

“On or about April 28, 2015, in the County of Tulare, the Crime of SALE OF A CONTROLLED SUBSTANCE, in violation of Health and Safety Code section 11379(a), a FELONY, was committed by **WILLIAM JOHN BOSMA**, who did unlawfully transport, import into the State of California, sell, furnish, administer, and give away, and offer to transport, import into the State of California, sell, furnish, administer, and give away, and attempt to import into the State of California and transport a controlled substance, to wit, METHAMPHETAMINE.”

Just prior to taking Bosma’s plea, the trial court asked counsel, “I think this is transportation, not sale; right?” Counsel agreed with the trial court. The trial court then changed by interlineation the word “SALE” in the first sentence to “transportation.” The trial court then told Bosma, “You’re now charged with on or about April 28, 2015, with the crime of transportation of a controlled substance, a felony. ¶ How do you plead to that charge?” Bosma pled no contest.

Bosma argues that by the simple expedient of changing one word in the complaint, his plea was not voluntary because he was convicted of a crime with which he was not charged. To reach this conclusion, Bosma argues he was only charged with violation of section 11379, subdivision (a). According to Bosma, by changing the word “sale” to “transportation,” the complaint now implicated subdivision (c) of this section.

Subdivision (c) defines the word “transport” as it is used in subdivision (a) as “to transport for sale.” According to Bosma, when the trial court failed to inform him of the definition contained in subdivision (c), and when the complaint failed to charge him with violating subdivision (c), his plea was rendered involuntary because he pled no contest to a crime with which he was not charged. In other words, according to Bosma, he agreed to plead no contest to the sale of methamphetamine, but he did not agree to plead no contest to transportation of methamphetamine for the purposes of sale.

The absurdity of Bosma’s argument is self-evident. Bosma was charged with a violation of section 11379, subdivision (a), he agreed to plead no contest to a violation of section 11379, subdivision (a), he pled no contest to a violation of section 11379, subdivision (a), and he was convicted of a violation of section 11379, subdivision (a). Whether the resulting conviction is because Bosma sold methamphetamine, or transported methamphetamine for the purpose of sale is not important. In either case, Bosma was convicted of the crime with which he was charged and to which he agreed to plead.

Moreover, the complaint before amendment charged Bosma with the sale of methamphetamine. It exceeds the bounds of reason to argue that he did not understand when the complaint was amended that the charge was transportation of methamphetamine for the purposes of sale when before amendment he was charged with the sale of methamphetamine.

Bosma’s focus on subdivision (c) is misplaced. Subdivision (c) simply defines the word “transport[ation]” as it is used in subdivision (a). Subdivision (a) describes the prohibited acts. We note that the charge in the complaint mirrors the acts listed in subdivision (a), including transportation of methamphetamine, so any claim of surprise must be rejected.

Finally, we also note that Bosma’s plea of no contest constitutes an admission to the elements of the charged offense. (*People v. French* (2008) 43 Cal.4th 36, 49.) So not

only does the complaint include the charge to which Bosma entered his plea, he also admitted he committed each element of the offense. Accordingly, he is not entitled to any relief.

We also reject Bosma's argument that the record does not support a claim that he transported the methamphetamine for the purpose of sale. The probation report summarized the police report for the incident as follows: After Bosma was stopped for a traffic offense, a search of his vehicle resulted in the discovery of .373 net grams of methamphetamine and drug paraphernalia, including a syringe and a digital scale. Apparently, Bosma contends the quantity of methamphetamine located was too small to be used for sales, and the presence of the syringe is indicative of personal use. While there is no expert testimony to support these assertions, we observe that the presence of a digital scale is generally indicative of sales, and the quantity possessed by Bosma appears to be sufficient to be sold. The inferences Bosma attempts to draw from these facts may have been arguable at trial, but certainly are not arguable since he admitted each element of the charged offense by entering his plea.

We also reject Bosma's due process argument. This argument is based on the assertion that he was not advised that after the amendment of the complaint a further amendment was required to specifically reference subdivision (c). As explained above, subdivision (c) merely defines the term "transport[ation]" as it is used in subdivision (a). Subdivision (a) defines the prohibited acts. Bosma's right to due process was not implicated.

DISPOSITION

The judgment is affirmed.